***THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE**

and

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

+WRIT PETITION NOS.13604 AND 15524 OF 2005

% 23-08-2005

W.P.No.13604 of 2005

Between:

Dr.C.L.Venkata Rao …Petitioner

and

Government of A.P. and others …Respondents

! COUNSEL FOR THE PETITIONER: MR.K.G.K.PRASAD

^ COUNSEL FOR RESPONDENTS 1 TO 7: G.P.FOR MEDICAL, HEALTH& FAMILY WELFARE

^COUNSEL FOR RESPONDENT NO.8: MR.N.RAM MOHAN RAO

^COUNSEL FOR RESPONDENT NO.9: MR.S.NIRANJAN REDDY

W.P.No.15524 of 2005

Between:

Dr.B.R.Suresh Babu and another …Petitioners

and

Government of Andhra Pradesh and other …Respondents

! COUNSEL FOR THE PETITIONERS: MR.K.BALAGOPAL

^ COUNSEL FOR RESPONDENT NO.2: MR.S.NIRANJAN REDDY

^ COUNSEL FOR RESPONDENT NO.3: MR.DHUBA NAGARJUNA BABU

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COMMON ORDER (Per the Hon'ble Sri Bilal Nazki, ACJ):

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Heard learned counsel for the parties. These are two writ petitions, which will be disposed of by this common judgment.

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The first writ petition i.e. ***W.P.No.13604 of 2005*** generated much debate in

the society as the doctors represented by the Junior Doctors' Association went on strike. When the matter was taken up by this Court, respondent No.8 appeared before the Court and an undertaking was given to this Court that the strike would be called off and it was called off accordingly. But without waiting for the orders from this Court, the strike was again resumed on 09-07-2005 and then it was called off on 14-07-2005. In the meanwhile, the Doctors' Association known as "Junior Doctors' Association" also filed a writ petition being W.P.No.15524 of 2005 raising certain grievances. Counters have been filed in both the writ petitions. We have heard learned Advocate General and also learned counsel appearing for the Medical Council of India.

Mainly two issues have to be resolved in these writ petitions. One of the issues, which is of greater public importance is whether the doctors have a right to go on a strike and in case they go on a strike, what would be the consequences of that strike for those doctors. Secondly, if there is a strike, what are responsibilities of State?

Mr B.Tarakam, Senior Counsel, who appeared for the Doctors' Association, on the last occasion fairly conceded that in terms of the Medical Regulations framed by the Medical Council of India, doctors have no right to go on a strike and if they abstain from duties unauthorisedly, the Regulations lay down a procedure which has to be followed by the Medical Council of India and in certain cases, the doctors can lose their registration and cannot practice if the registration is cancelled.

The Medical Regulations are framed under Section 20A read with Section 33(m) of the Indian Medical Council Act, 1956. Regulation No.2 in Chapter-2 lays down the duties of physicians to their patients. Regulation No.2.4 lays down:

> *"provisionally or fully registered medical practitioner shall not willfully commit an act of negligence that may deprive his patient or patients from necessary medical care."*

Chapter-7 of these Regulations deals with misconduct and the acts of commission or omission on the part of a physician, which construe misconduct. Regulation No.7.1 deals with violation of the Regulations. Regulation No.7.24 lays down that:

> *"If a physician posted in a medical college/institution both as teaching faculty or otherwise shall remain in hospital/college during the assigned duty hours. If they are found absent on more than two occasions during this period, the same shall be construed as a misconduct if it is certified by the Principal/Medical Superintendent and forwarded through the State Government to Medical Council of India/State State Medical Council for action under these Regulations."*

Regulation No.8.1 deals with punishment and disciplinary action for misconduct. Under Regulation No.8.2 deletion from the register the name of a registered practitioner can be ordered either for a limited period or permanently. This power is also available to the State Medical Council. Though these doctors were on strike, which was not permissible under the Regulations, but after sometime, the Doctors' Association came forward voluntarily to give up the strike and decided to place their grievances before this Court by way of a writ petition being W.P.No.15524 of 2005, therefore, in the interest of these young doctors and the society at large, we direct that no action shall be taken by the Medical Council of India or by the State Medical Council against those doctors who went on strike from 23-06-2005 to 29-06-2005 and again from 09-07-2005 to 14-07-2005.

Coming to the second question, this Court is concerned about the fact that the situation, which emerged when the doctors went on strike, may emerge once again at any point of time, therefore, we direct the State Government to have a B-Plan prepared as usually the Governments have in case of any other emergencies. If the doctors go on strike, the people should not be forced first to come to the Court and then the Government will wake up when the Court takes cognizance of the matter. There should always be a permanent body in place, which immediately takes over the health care of the people of the State, if the doctors go on strike. The directions given by us by an interim order dated 11-07-2005, where we requested the private hospitals to open their doors for people without fee and where we also directed the

Police, Para-military Force and the Army to open their hospitals for common man may also be taken note of and some other ways may be found. This should be done well in advance before the emergency and not when there is emergency on account of the doctors going on strike. There should be a mechanism that if doctors go on strike, the alternative system comes into operation automatically. The Government shall devise a plan within three months and also publicize the same, so that in case there is any strike by any doctor, people are aware as to where they can seek medical advise and treatment.

Coming to the second writ petition i.e. ***W.P.No.15524 of 2005,*** which is filed by the doctors, there are mainly three grievances, which are as follows:

1. There are not adequate facilities in Government hospitals whether they are dispensaries or a primary health center or a hospital attached to a medical college;

2. there is not sufficient teaching staff in the medical colleges run by the Government and

3. non-implementation of Justice B.P.Jeevan Reddy's Committee report in giving permission to establish new private medical colleges although, there are not requisite facilities and infrastructure available in those colleges.

Coming to the first grievance, we have gone through the affidavit and the counter-affidavit. We have no hesitation to record that adequate facilities are not available in the Government hospitals. Even the residency system, which was suggested by Justice B.P.Jeevan Reddy's Committee and accepted by the Government, is not at place, but the learned Advocate General has assured this Court and it has also been stated in the counter-affidavit that steps have already been taken to place this system into operation. May be putting the system into operation in all the major hospitals of the State will take some time. In these circumstances, we direct that let this system be put into operation as the Government has no objection to put it into operation in a phased manner and in the first instance,

within a period of six months let this system be put into operation in three medical colleges out of ten medical colleges and within a period of next three months in other medical colleges.

The petitioners also complained that sufficient money is not available for purchase of drugs and the drug list has been reduced substantially in the last year and therefore, the patients are suffering on account of non-availability of the drugs. This is not disputed in the counter-affidavit. There are other grievances of facilities, which appear to be genuine. We deal with this grievance when we deal with other grievances.

The second major grievance is that the medical colleges run by the Government do not have sufficient teaching staff. This is also conceded by the learned Advocate General and in para 4 of the counter-affidavit, the reasons for insufficiency of teaching staff have been given. It is contended by the State that sufficient people do not come forward to take up the jobs in medical colleges or in Government hospitals, because with the establishment of new private corporate hospitals, these doctors are getting much more salaries than what the State is offering, therefore, the doctors are not attracted towards the Government hospitals. Justice B.P.Jeevan Reddy has also dealt with this problem in his report. This is a problem, which is suffered these days through out the country by all the professional colleges, because professionals are getting much more salaries in private sector than in Government Sector, but teachers in medical education cannot be appointed in violation of the Regulations of the Medical Council of India, therefore, it is time for the people concerned, including the Medical Council of India to look into the problem. We are also conscious that this Court would not be in a position to give any directions with regard to either the facilities in the hospitals or with regard to the appointment of teachers in the medical colleges. This is a specialized subject, which will have to be addressed by specialists. However, this Court would suggest to examine this aspect through an appropriate Committee, which we will constitute to see whether it is possible to engage doctors who are working in private sector on part-time basis, so that they also teach in medical colleges and go on earning money in private colleges as well. We also suggest to examine the possibility of taking an undertaking from the doctors, who get admission to Master's Degrees that

after they get their Master's Degree, they would serve the Government hospitals for a specified period of time, because Government is spending a lot of money on their education for M.B.B.S and M.D.M.S and therefore, it is expected that they should undertake to work with the Government for a specified period of time. The Government should also examine the possibility of refusing to give admissions to M.D.M.S to the candidates who do not give such an undertaking. The Committee shall also look into the matter with regard to adequate facilities in the Government hospitals.

These are only suggestions from the Court, which shall have to be considered by the Committee, which we are going to appoint. The Committee shall consider these suggestions and shall also prepare a blueprint for Government hospitals and medical colleges with regard to their infrastructure, equipment, facilities, availability of drugs to poor people, strength of the teaching and other staff. This Committee shall be headed by the Principal Secretary to Government, Medical, Health and Family Welfare. He shall nominate two Principals of the Government Medical Colleges to the Committee as Members. The Chief Secretary to Government may nominate two other experts to the Committee. On the suggestions of the Doctors' Association, we are also including the following two members in the Committee as members of the Committee.

1. Dr.Srinavas Pandian, Assistant Professor, MNJ Institute of Oncology, Hyderabad
2. Dr.P.V.R.Bhaskar Rao, Retired Professor of C.T. Surgery, Osmania Medical College, Hyderabad.

The Director of Medical & Health shall be the Member Secretary. Medical Council of India shall also nominate a person to the Committee as a Member. This Committee shall consider all these issues and shall file a report to the Government within a period of three months.

The next aspect, which requires to be considered by this Court is whether the State Government is empowered to give no objection certificates for establishment

of new colleges as that was one of the grievances of the Junior Doctors' Association and whether the Medical Council of India can be restrained from permitting new colleges to be established. This was examined by Justice B.P.Jeevan Reddy also and in his report, he correctly stated that is the policy decision of the Government, in which he could not interfere. We also feel that this is outside the scope of the writ petition. In terms of the Indian Medical Council Act, ultimately, it is the job of the Medical Council of India either to refuse or to grant permission to a new medical college. Four medical colleges were made parties to the writ petition, which have been recently established. To ensure ourselves that these medical colleges are being run in accordance with the Regulations framed by the Medical Council of India, we asked the Medical Council of India to conduct a fresh inspection. Report has been filed. We have perused the report and according to the report, these medical colleges have the required staff for establishing a medical college. This report has been contested by the Doctors' Association mainly on one ground that the inspection team has not applied the Establishment of Medical College Regulations, 1999 (for short "Regulations of 1999") correctly and the required strength shown by the report is not in accordance with the Regulations of the Medical Council of India. But, Mr.S.Niranjan Reddy, has drawn our attention to the Regulations of 1999, which clearly show that a new medical college has not to be established in one year, but it has to be established over a period of five years in a phased manner and the Medical Council of India grants permission to new medical colleges on annual basis till five years are completed and at the end of five years, the medical college should have the full strength of the staff. These Regulations of 1999 make it clear that the new medical colleges are established in accordance with Regulations and have the requisite staff in terms of Regulations. We , however, feel that the monitoring of the medical colleges and dental colleges by the Medical Council of India should be more effective and transparent. Andhra Pradesh has already 21 private medical colleges, 10 Government medical colleges and also 18 dental colleges. We do not feel that with the present composition of Medical Council of India staying in New Delhi, it is always possible to monitor these colleges effectively. The quality of education in these medical colleges is closely connected to the future of the State, therefore, the Medical Council of India may consider having some permanent body stationed at Hyderabad, so that these colleges are more effectively monitored.

Another grievance of the Junior Doctors was that the names of the doctors, who are teaching in various medical colleges, are not being published. The learned Advocate General submits that they are already available on Website and shall also be upgraded as and when necessary.

With these directions, both the writ petitions are disposed of. No order as to costs.

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(Bilal Nazki, ACJ)

23rd August, 2005

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(G.Chandraiah,J)

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Note: L.R. Copies to be marked

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